

Ex. D

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Ameriway Corporation

Plaintiff,

v.

May Yan Chen,

Ability Customs, Inc.,

Defendants.

19-cv-09407 (VSB) (VF)

DECLARATION OF ANDREW NICHOLAS

I, Andrew Nicholas, declare the following:

1. My name is Andrew Nicholas. I have over 20 years of experience in the graphic design field. From 2011-2021, I was COO and Partner of “Pixel Parlor,” an award-winning design studio specializing in both print and web design services. I am currently employed as a Senior UX Designer at BP3 Global, a software company in the automation technology field.
2. I have substantial experience in multiple digital mediums, such as electronic imaging, printing, publishing, photo retouching, printing equipment, printing supplies, computer graphics (Adobe Creative Cloud) and digital imaging. As a graphic designer, I also have considerable educational and professional experience in typography and fonts within printing and marketing settings. In 2003, for example, I attended a six-week course in the United Kingdom focused exclusively on typography at the University of Reading, deepening my knowledge of the details and elements that comprise font families. My resume is attached herein in Appendix A.

3. I continue to review materials and documents related to this case and reserve the right to supplement this expert opinion based on any additional work that I may be asked to do.

Background and Documents Reviewed

4. It is my understanding that the Defendant in this case, May Yan Chen (“Chen”), claims to have sent a document titled “Terms and Conditions” to Plaintiff Ameriway Corporation in April 2017, granting her the right to place a lien over several cargo containers. I understand Ameriway disputes that Chen ever had a valid lien, and is challenging the authenticity of several documents related to the Terms and Conditions.
5. I have reviewed two email exhibits submitted by Chen to the Court on August 16, 2022, marked as 157-1, 157-3. I understand the email exhibits are PDF scans of paper hardcopies; and, electronic versions of the emails are unavailable at this time. A complete list of the documents reviewed by me for this report is shown in Appendix B.
6. I understand Chen is offering the emails as proof that the Terms and Conditions are authentic, specifically that she sent the document to her customers since 2011. The first email I reviewed is dated January 8, 2013 (157-1), and references a “Power of Attorney & Terms of Conditions” in the ‘Subject’ line; it also references a “Terms and Conditions .pdf” in the ‘Attachments’ field. The second email I reviewed is dated January 5, 2017 (157-3), and references the “Terms and Conditions.pdf” in the ‘Attachments’ field.
7. The email printouts were generated in Microsoft Outlook, which prints the body of the email below a standardized header (known as the “memo header”) containing the ‘From,’ ‘Sent,’ ‘To,’ ‘Subject,’ and ‘Attachments’ fields.
8. Outlook allows users to define a single font for the title bar and memo header fields, but does **not** allow the user to choose multiple/different fonts **within** the header fields. For

example, a user cannot use “Times New Roman” in the “From” field, and “Calibri” in the “Attachments” field. Nor does Outlook allow users to introduce any variation of font size (different sized text is not permitted), nor font width (the user cannot specify that certain fields/text is more condensed or expanded).

9. Additionally, Outlook sets default spacing (referred to as “kerning” within a word, or called “tracking” when referring to the letter spacing of an entire line) of the characters within the memo header fields, which cannot be adjusted. This means there will always be uniform spacing between the letters within the memo header fields of a printed Outlook email. And while a user may adjust the font size of the header field, this selection will always result in all characters being uniform in size. **Again, Outlook does not allow for different font sizes or types within the printed memo header.**
10. The two emails at issue contain multiple formatting inconsistencies (e.g., different font characteristics and unexpected spacing within the header, indentation inconsistencies) not permitted within Outlook, and which are strong evidence of digital manipulation.

The January 2013 Email (157-1): Indentation Inconsistencies Within the Memo Header

11. Outlook automatically formats all lines within the memo header fields flush left (aligned on the left axis). This default setting cannot be altered by the user. However, the subject email printout, dated January 8, 2013, contains a clear indentation anomaly, namely ‘May C’ in the ‘From’ line is noticeably not aligned with the ‘To,’ ‘Subject,’ and ‘Attachment’ lines. Outlook does not permit these indentation variations.

Case 1:19-cv-09407-VSB-VF Document 157-1 Filed 08/16/22 Page 1 of 1

Info Everything is left aligned, except the top line "May C." The extra space here is represented with a blue overlay.

From: May C <info@abilitycb.com>
 Sent: Tuesday, January 8, 2013 3:49 PM
 To: R [REDACTED] s.com
 Subject: service rate sheet, Power of Attorney & Terms of Conditions
 Attachments: POWER OF ATTORNEY.docx; Terms and Conditions.pdf; rate sheet.docx

Dear F [REDACTED]

Thank you for contacting Ability Customs Brokers for a service inquiry. The service rate sheet and Terms and Conditions are attached, please review it and let us know if you have any questions. Otherwise, please complete the attached Power of Attorney and return it back to me with an IRS document to verify your company's EIN number. For an individual importer, social security card and driver license copy is required to verify the social security number.

The January 2013 Email (157-1): Impossible Font Variations Within the Memo Header

12. Outlook allows the user to select different fonts within the body, or message portion of the email. However, Outlook does not allow different font variation (sizes, styling, etc.) within the memo header itself. In other words, the font within the 'From,' 'Sent,' 'To,' 'Subject', and 'Attachments' fields should be completely uniform. However, the January 2013 email contains obvious font inconsistencies within the header, which is a clear sign of digital manipulation. For example, 'Terms of conditions' within the 'Subject' line is noticeably different from 'Terms and 'Conditions.pdf' in the 'Attachments' line. These characters should be the same size in an email printout, but even a cursory review reveals they are not:

Case 1:19-cv-09407-VSB-VF Document 157-1 Filed 08/16/22 Page 1 of 1

Info

From: May C <info@abilitycb.com>
 Sent: Tuesday, January 8, 2013 3:49 PM
 To: R [REDACTED] s.com
 Subject: service rate sheet, Power of Attorney & Terms of Conditions
 Attachments: POWER OF ATTORNEY.docx; Terms and Conditions.pdf; rate sheet.docx

Dear F [REDACTED]

Thank you for contacting Ability Customs Brokers for a service inquiry. The service rate sheet and Terms and Conditions are attached, please review it and let us know if you have any questions. Otherwise, please complete the attached Power of Attorney and return it back to me with an IRS document to verify your company's EIN number. For an individual importer, social security card and driver license copy is required to verify the social security number.

These words are condensed, particularly the "C."

These words are standard width, the "C" is the normal width.

The January 2013 Email (157-1): Impossible Space Variations Within the Memo Header

13. The spacing (“tracking”) between the characters in the memo header is set by Outlook, and cannot be altered by the user. There is no practical reason to change the spacing within the memo header, so Outlook does not even provide the option. However, the January 2013 email contains space variation between the letters *in the same line*. Specifically, there is significantly more space between the letters in ‘January’ than ‘Tuesday’ in the ‘Sent’ line. This tracking inconsistency is not possible within Outlook, which controls tracking, and is a clear sign of image manipulation.

Case 1:19-cv-09407-VSB-VF Document 157-1 Filed 08/16/22 Page 1 of 1

Info email address is tightly tracked (letterspacing)

From: May C <info@abilitycb.com> The date has much more tracking (looser letterspacing)
 Sent: Tuesday, January 8, 2013 3:49 PM
 To: R [REDACTED] s.com
 Subject: service rate sheet, Power of Attorney & Terms of Conditions
 Attachments: POWER OF ATTORNEY.docx; Terms and Conditions.pdf; rate sheet.docx

Dear F [REDACTED]

Thank you for contacting Ability Customs Brokers for a service inquiry. The service rate sheet and Terms and Conditions are attached, please review it and let us know if you have any questions. Otherwise, please complete the attached Power of Attorney and return it back to me with an IRS document to verify your company's EIN number. For an individual importer, social security card and driver license copy is required to verify the social security number.

The January 2017 Email (157-3): Spacing Anomalies Within Memo Header

14. Again, Outlook controls spacing within the memo header; spacing should be absolutely uniform. However, in the January 2017 email, the date information—‘Thursday, January 5, 2017 1:02 PM’—contains significantly larger spacing between the elements. Even a cursory glance shows double spacing between ‘Thursday’ and ‘January’ within the Sent field. There are also two spaces between ‘2017’ and ‘1:02 PM’ in the ‘Sent’ line, which again is not permitted (nor would ever occur) within Outlook.

Info

From: Info
 Sent: Thursday, January 5, 2017 1:02 PM
 To: 'k [REDACTED]@t.net'
 Subject: RE: Broker Service & Power of Attorney
 Attachments: rate sheet.docx; POWER OF ATTORNEY #2.docx; Terms and Conditions.pdf

Dear K [REDACTED]

Blue indicates unexpected, abnormal spacing between words.

Green shows a typical, expected spacing between words

Thank you for contacting Ability Customs Brokers for a service inquiry. Our service rate sheet and Terms of Conditions are attached, please review it and complete the attached Power of Attorney if you decide to hire us to handle your shipment. Please send the complete Power of Attorney with an IRS document, SS-4 or the 1st page company federal tax return to verify your company's EIN number to us if you satisfy our service charges. For an individual importer, social

15. Further, when a user sends an email, the date information is automatically logged by Outlook. Outlook retrieves and displays this information when the user prints an email through the 'Memo Style' function. Outlook handles this entire process, and certainly does not allow the user to change the spacing within the 'Sent' field. Again, there is no practical reason for double-spacing between the elements in the 'Sent' field, so the user is not given the option to make these alterations in the first place.

The January 2017 Email (157-3): 'Times New Roman' Inconsistencies Within the Memo Header

16. Again, font size and type should be absolutely uniform within the Memo Header. However, in the 'Attachments' line, the words 'Terms and Conditions.pdf' are compressed (squeezed horizontally) in contrast to 'sheet.docx,' which are visibly extended (horizontally stretched). Outlook does not permit such variation within the Memo Header, much less within the *same line* in the Memo Header. This is a clear sign of digital manipulation.

Info

From: Info
 Sent: Thursday, January 5, 2017 1:02 PM
 To: 'K [REDACTED]@t.net'
 Subject: RE: Broker Service & Power of Attorney
 Attachments: rate sheet.docx POWER OF ATTORNEY #2.docx Terms and Conditions.pdf

These words are condensed, the "n" appears much narrower than elsewhere in the document.

These letters have been stretched horizontally. The "e" is wider than elsewhere in the header area.

Dear K [REDACTED]

Thank you for contacting Ability Customs Brokers for a service inquiry. Our service rate sheet and Terms of Conditions are attached, please review it and complete the attached Power of Attorney if you decide to hire us to handle your business. Please complete Power of Attorney with an IRS document SS 4 or the 1st page company federal tax

Summary of Findings and Conclusion

17. In my opinion, there is overwhelming digital evidence the two subject emails have been manipulated/edited. The multiple formatting discrepancies identified above, which are visibly noticeable to a layperson, simply do not occur within Outlook. Further, these anomalies are not the result of poor scanning, because the scanning of a non-flat piece of paper (resulting in a curved surface or plane) always manifests itself with a consistent transformation of page content, be it vertically, horizontally, or diagonally, often paired with slight discoloration of the background, as the paper's curve introduces a shadow gradient. A visible symptom of a poor scan does not selectively impact only one word or part of a line, it imprints itself in a larger way, impacting more page content.

18. In conclusion, it is my informed opinion, to a very high degree of confidence, the two printouts do not represent original, untouched, authentic emails. They could not have been generated by Outlook in their present form without being edited/manipulated.

19. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of September, 2022.


 Andrew Nicholas

Appendix A



Andrew Nicholas

SENIOR DESIGN MANAGER / DIRECTOR

andrew.nicholas@gmail.com
(215) 370-7305

2348 E Norris St.
Philadelphia, PA 19125

Andrew has over twenty years of experience in UX design, graphic design, and development team management in support of company goals in many different industries.

EXPERIENCE

BP3 Global

Senior UX Designer // Aug 2022 – Current
Austin, TX // bp-3.com

Supporting the company's design practice through client collaboration on custom enterprise software implementation.

Pixel Parlor

Chief Operating Officer // Jul 2021 – Jul 2022
Philadelphia, PA // pixelparlor.com

Pixel Parlor is an award-winning, B-Corp certified design studio specializing in interactive, print and experiential graphic design.

Studio direction of the 12-person team, management of the web development & design teams, art direction, and client relationships for a variety of print, digital, and UX projects.

Founder & CEO // Oct 2011 – Jul 2021
Philadelphia, PA // pixelparlor.com

SELECT CLIENTS: A24 Films, BalletX, Campbell's, The END Fund, ESF Summer Camps, The Film Arcade, Geneva Global, IFC Films, Kloeckner Metals, Lionsgate Premiere, NKCDC, SCAPE, U3 Advisors, and The Wheeler School.

Brooklyn Academy of Music

Senior Interactive Designer // Feb 2008 – Jul 2011
Brooklyn, NY // bam.org

Designed and produced digital initiatives (websites, cinema screens, and LED billboard) across the world-renowned performing arts organization, managed the interactive design department, and collaborated with partner arts organizations and vendors.

J.Crew

Web Designer // Jul 2006 – Jan 2008
New York, NY // jcrew.com, madewell.com

Under the direction of Mickey Drexler and Jenna Lyons, our team elevated the J.Crew brand. This included the e-commerce experience and launch of sister brand, Madewell.

Macy's

Web Designer // Oct 2005 – Jun 2006
New York, NY // macys.com, thisit.com

Focused on an enhanced fashion and entertainment-driven e-commerce experience for both on macys.com and thisit.com. Additionally, helped create illustrative and animated advertising campaigns.

Sports Endeavors

Designer // Sep 2004 – Sep 2005
Hillsborough, NC // soccer.com, lacrosse.com

Print and apparel design to support retail sales, plus athletic partner advertising (brands included Nike, Puma, Adidas, Nike and Diadora).

SKILLS

Creative Direction	Front-end Development (HTML/CSS/PHP/JS)
Team Leadership	Wordpress & Shopify
Project Management	SEO & SEM
Team Staffing and Building	Network Administration
UX & Web Design	

EDUCATION

North Carolina State University

College of Design // Raleigh, NC
Bachelor of Graphic Design, cum laude
Minor in Film Studies

Goldman Sachs 10,000 Small Businesses

Scholar, Cohort 13 // Philadelphia, PA

University of Reading (UK)

Graphic design studio at the Department of Typography

RECOGNITION

- Philadelphia 100 Honoree (2018)
- B Labs: B-Corp Best for the World Honoree (2017, 2018, 2019)
- *Graphic Design USA Magazine*: Web Design & Graphic Design winner, various projects (2014-2021)
- *HOW Magazine*: Promotion & Marketing Design Merit Award Winner (2016)
- Temple University Diamond Film Festival: Judge for Best Web Design (2012)
- Fiskars: Project Orange Thumb Grant Recipient (2010)

Appendix B

Info

From: May C <info@abilitycb.com>
Sent: Tuesday, January 8, 2013 3:49 PM
To: R [REDACTED] [s.com](mailto:[REDACTED]@s.com)
Subject: service rate sheet, Power of Attorney & Terms of Conditions
Attachments: POWER OF ATTORNEY.docx; Terms and Conditions.pdf; rate sheet.docx

Dear F [REDACTED]

Thank you for contacting Ability Customs Brokers for a service inquiry. The service rate sheet and Terms and Conditions are attached, please review it and let us know if you have any questions. Otherwise, please complete the attached Power of Attorney and return it back to me with an IRS document to verify your company's EIN number. For an individual importer, social security card and driver license copy is required to verify the social security number.

Best Regards,

May

Ability Customs Brokers
13910 Doolittle Dr
San Leandro, Ca 94577
T:510-347-5555
F:510-347-1555
WWW.abilitycb.com

****Based on the current challenges at all the West Coast Ports due to terminal constraints, kindly note Ability Customs Brokers will not be held liable for any demurrage, standby time, per diem/detention and/or dry runs.****

****Important !!! ****

U.S. Customs & Border Protection will commence full ISF enforcement on July 9, 2013 and will issue liquidated damages against the importer for non-compliance. The Importer Security Filing must be electronically filed with CBP no later than 24 hours prior to the departure of the vessel and it is the importer's responsibility to ensure that it is done. Liquidated damages assessed will be \$5,000 per violation so please contact broker to make sure that you supply the information in advance or make arrangements to have it filed.

Info

From: Info
Sent: Monday, August 3, 2015 1:32 PM
To: R [REDACTED]
Subject: Power of Attorney/Terms of Conditions Rate Sheet
Attachments: rate sheet.docx; POWER OF ATTORNEY.docx; Terms and Conditions.pdf

Dear L [REDACTED]

Thank you for contacting Ability Customs Brokers for a service inquiry. Our service rate sheet and Terms of Conditions are attached, please review them, and complete the attached Power of Attorney if you decide to hire us to handle your shipment. Please send the complete Power of Attorney with an IRS document, SS-4 or the 1st page company federal tax return along with the business owner's driver license copy to verify your company's EIN number to us if you satisfy our service charges. To complete power of attorney, please use lines 1, 2, 3, 4, 5, 7, 9. For an individual importer, social security card and driver license copy is required to verify the social security number.

Best Regards,

Emily

Ability Customs Brokers
13910 Doolittle Dr
San Leandro, Ca 94577
T:510-347-5555
F:510-347-1555
WWW.abilitycb.com

****Based on the current challenges at all the West Coast Ports due to terminal constraints, kindly note Ability Customs Brokers will not be held liable for any demurrage, standby time, per diem/detention and/or dry runs.****

****Important !!!****

U.S. Customs & Border Protection will commence full ISF enforcement on July 9, 2013 and will issue liquidated damages against the importer for non-compliance. The Importer Security Filing must be electronically filed with CBP no later than 24 hours prior to the departure of the vessel and it is the importer's responsibility to ensure that it is done. Liquidated damages assessed will be \$5,000 per violation so please contact broker to make sure that you supply the information in advance or make arrangements to have it filed.

Info

From: Info
Sent: Thursday, January 5, 2017 1:02 PM
To: 'k [REDACTED]@t.net'
Subject: RE: Broker Service & Power of Attorney
Attachments: rate sheet.docx; POWER OF ATTORNEY #2.docx; Terms and Conditions.pdf

Dear K [REDACTED]

Thank you for contacting Ability Customs Brokers for a service inquiry. Our service rate sheet and Terms of Conditions are attached, please review it and complete the attached Power of Attorney if you decide to hire us to handle your shipment. Please send the complete Power of Attorney with an IRS document, SS-4 or the 1st page company federal tax return to verify your company's EIN number to us if you satisfy our service charges. For an individual importer, social security card and driver license copy is required to verify the social security number.

Our service charges are not included any other third parties fees, such as freight agent document handling fee, customs exam, terminal fee, warehouse charge and trucking service, etc.

Please provide the Import Security Filing (ISF, 10+2) information to us prior to the vessel departure date from the export country to the U.S, we have to report it to the U.S customs before the vessel sailing date, if this is an ocean shipment. Also, we will contact the shipper/agent on behalf of your company for commercial invoice, packing list and bill of lading if you let us know their email contact. For any question or information, please contact us.

Best Regards,

Jenny

Ability Customs Brokers
13910 Doolittle Dr
San Leandro, Ca 94577
T:510-347-5555
F:510-347-1555
WWW.abilitycb.com

****Based on the current challenges at all the West Coast Ports due to terminal constraints, kindly note Ability Customs Brokers will not be held liable for any demurrage, standby time, per diem/detention and/or dry runs.****

****Important !!! ****

U.S. Customs & Border Protection will commence full ISF enforcement on July 9, 2013 and will issue liquidated damages against the importer for non-compliance. The Importer Security Filing must be electronically filed with CBP no later than 24 hours prior to the departure of the vessel and it is the importer's responsibility to ensure that it is done. Liquidated damages assessed will be \$5,000 per violation so please contact broker to make sure that you supply the information in advance or make arrangements to have it filed.